

# MINUTES OF THE SOLID WASTE MANAGEMENT BOARD MEETING

Indiana Government Center South  
Conference Center Room A  
402 West Washington Street  
Indianapolis, Indiana  
November 19, 2002

The meeting was called to order by Chairperson Jeffry Carter. Those present for all or part of the meeting were:

Mr. Michael Carnahan  
Ms. Linda Cosgrove  
Mr. Rick Dyar  
Mr. Chuck Himes  
Mr. Jeff Langbehn  
Dr. Stephen Wintermeyer  
Mr. Howard Cundiff (Proxy, Indiana State Department of Health)  
Mr. Thomas Hohman (Proxy, Department of Natural Resources)  
Ms. Michaela Kendall, Proxy, Lieutenant Governor's Office  
Ms. Deborah Albright, Board Counsel

A quorum was present.

In addition, the following IDEM staff members were present for all or part of the meeting:

Mr. Bruce Palin, Deputy Assistant Commissioner, Office of Land Quality  
Ms. Lynn West, Operations and Information Branch, Rules, Planning and Outreach Section  
Ms. Marjorie Samuel, Operations and Information Branch, Rules, Planning and Outreach Section

Chairperson Carter opened the meeting at 1:32 p.m.

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| 1. | Chairperson Carter asked for additions or corrections to the minutes of the Solid Waste Management Board meeting of October 15, 2002.                    | APPROVAL OF<br>MINUTES                |
|    | There being none, <u>Mr. Howard Cundiff moved that the minutes be approved as presented and Mr. Chuck Himes seconded. The motion passed unanimously.</u> |                                       |
| 2. | Chairperson Carter then asked Mr. Bruce Palin to address the Board. Mr. Palin deferred to Ms. Lynn West to provide an update on the rule status.         | ASSISTANT<br>COMMISSIONER'S<br>REPORT |

Ms. West distributed the project list and noted that no new rules were added to the list. She then informed the Board about two public meetings scheduled to receive input on two rulemakings. The first is for the Underground Storage Tank Change Rule; the meeting scheduled for December 17, 2002, 1:00 p.m. in the Indiana Government Center South, Conference Center Room A. The other meeting is for the Substantial Changes to the Municipal Solid Waste Landfills Rule; the focus will be on storm water permitting and other issues of interest to the regulated community, December 20, 2002, at 1:00 p.m., Conference Rooms A and B, 11<sup>th</sup> floor of the Indiana Government Center North. Finally, Ms. West mentioned that she had received a request to schedule

the annual Aaway@ trip for the Board meetings to occur in September rather than October. She said that there was already a request for a visit to a tire shredding operation and that she would be happy to try to schedule other activities for that meeting. For a verbatim account of Ms. West's remarks, please see pages 4 and 5 of the official transcript of this meeting.

3. Chairperson Carter then asked Ms. Deborah Albright, Board Counsel, to address the Board about the Board's role regarding non-rule policy documents. Ms. Albright said that there were three statutes involved. She said:

AThe first one talks about the Board having the power to adopt rules to regulate certain things, to develop operating policy about the activities of IDEM, and to carry out any other duties that are imposed by law.

The second talks about IDEM's procedure in utilizing a non-rule policy document and how it's supposed to go through certain steps before it can make that non-rule policy document operational.

And the third one ... simply says the Department shall follow the operating policy established in rules adopted by the Board.@"

Ms. Albright offered her interpretation that the Board has the power to set operating policy for the Department of Environmental Management (IDEM) and to promulgate rules and regulations. The Commissioner of IDEM has the authority to carry out the rules. The Board's role is to interact with IDEM in its rulemaking functions, but not to organize the IDEM. As this applies to non-rule policy documents, IDEM is responsible for presenting a non-rule policy document to the Board, to receive input and provide an opportunity for discussion, before the NPD becomes effective. The Board has an active role if it decides to initiate a rulemaking action based on the nonrule policy document. For a verbatim account of Ms. Albright's presentation, please see pages 6 through 10 of the transcript of this meeting.

Chairperson Carter said that he had an appearance card for Bill Beranek, with the Indiana Environmental Institute, who wished to address the Board on this subject. Mr. Beranek began by briefly reviewing the history of the air, water and solid waste boards and their responsibilities to promulgate rules and establish policies. Originally, the boards handled appeals of IDEM decisions, but eventually the appeal process was statutorily given to an administrative law judge. He also touched on the rulemaking process and the evolution of the involvement of stakeholders. Mr. Beranek said that rather than making rulemaking extremely detailed, that non-rule policy documents could be used to cover those decisions not in the rulemaking.

AIf there's an ultimate conflict and can't be resolved in the policy, that goes back to either the law to be changed or to the rule. It was hoped that the procedure that the Board could use to hear these polices could alleviate much of that pressure ...@"

Finally, Mr. Beranek said that stakeholders feel that the Asystem@ hasn't been working as intended and that legislation will be proposed this session to address this as well as other matters related to board rulemaking. For a complete account of Mr. Beranek's remarks, please see pages 11 through 16 of the official transcript of this meeting.

Mr. Jeff Langbehn commented that his interpretation was that IDEM has the authority to write nonrule policy documents but that if the Board disagrees, they have the ability to move that policy into a rulemaking. Mr. Beranek agreed and said that rulemaking becomes complex and difficult to resolve if every policy dispute is moved to rulemaking. It is more practical in some cases to try to resolve issues at the policy level. Mr. Langbehn and Mr. Beranek both agreed that while IDEM doesn't actually have to write down non-rule policy documents to interpret a rule, it is desirable in that it makes compliance and consistency easier. Please see pages 17 through 21 of the official transcript of this meeting.

Chairperson Carter then announced the rulemaking action:

\$ Preliminary adoption of amendments to rules of the Board at 329 IAC 3.1, hereafter known as the 2002 Hazardous Waste Annual Update Rule.

Chairperson Carter said that the 2002 Hazardous Waste Annual Update Rule was included in the board packet and is available for public inspection in the Indiana Department of Environmental Management File Room, located on the 12<sup>th</sup> floor of the Indiana Government Center North. The draft rules were published in the September 1, 2002 Indiana Register at 25 IR 4222. Instructions were given to the public regarding offering oral statements and comments to the Board; the court reporter was affirmed.

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| <p>4. Chairperson Carter announced that amendments to rules of the Board at 329 IAC 3.1, the 2002 Hazardous Waste Annual Update Rule, would be considered for preliminary adoption. He introduced Exhibit A, the draft rule, into the record of the hearing. He then asked Mr. Steve Mojonnier to address the Board.</p> | <p style="text-align: center;">PRELIMINARY ADOPTION<br/>2002 HAZARDOUS WASTE<br/>ANNUAL UPDATE RULE<br/>329 IAC 3.1</p> |
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Mr. Mojonnier briefly reviewed the history of the rulemaking and Indiana's authorization to administer the hazardous waste program. He said that the 2002 Update amends the hazardous waste management rules to make them consistent with the federal hazardous waste management program through May 16, 2002. Six changes to hazardous waste management regulations in 40 CFR Parts 160 through 270 are included in this rule. Mr. Mojonnier reviewed the changes that consist mainly of clarifications and corrections. He said that two changes will slightly increase annual cost and that four changes will result in either no cost or reduction of costs. The economic impact will be less than \$500,000 to regulated entities. He concluded by recommending preliminary adoption of the 2002 Hazardous Waste Annual Update, presented as Exhibit A. There being no public comment, the hearing was closed. There being no board discussion, Mr. Langbehn moved that the rule be preliminarily adopted. Ms. Linda Cosgrove seconded. The motion passed unanimously.

5. Chairperson Carter said that there would be a presentation of the nonrule policy document (NPD) ARisk Integrated System of Closure, the RISC Users Guide, Chapter 2". Chairperson Carter said that the NPD is available for public inspection, comment and copying in the file room of the Department of Environmental Management, 12<sup>th</sup> floor, Indiana Government Center North, Monday

through Friday between the hours of 8:30 a.m. and 4:30 p.m. The NPD was presented by Bruce Palin, Deputy Assistant Commissioner, Office of Land Quality.

Mr. Palin said that since there was a detailed presentation at the last Board meeting, he wouldn't repeat it. However, as a refresher, he explained that the NPD revisions to the Risk Integrated System of Closure, (RISC) being discussed are relative to only the user's guide chapter relative to the RCRA, or hazardous waste regulations. It incorporated a restrictive covenant and use of restrictive covenants put in place by the 2001 legislature. Mr. Palin also reviewed the efforts that were made to work with interested parties to refine the use of the restrictive covenant in the non-rule policy document. There was a request for comments on the non-rule policy document and also an extension on the time when comments were due. A copy of a written response to Bethlehem Steel and Mr. Mark Shere's comments was also distributed. Mr. Palin said that he expected additional discussion on matters that were brought up, but not a focus on the materials being discussed. He concluded by saying that IDEM was planning to apply what had been written, and then asked for Board input. Please see pages 28 through 31 of the transcript of this meeting.

There being no Board discussion, Chairperson Carter asked if there was any comment from the general public. There being none, Chairperson Carter announced that written comments within the next thirty (30) days should be sent to Mary Beth Touhy, Assistant commissioner, Office of Land Quality. No formal written response to comments will be provided. At this point, Mr. Palin said that while it isn't required, IDEM often attempts to reply. Chairperson Carter said that the Board would desire that as well. If the non-rule policy documents is changed, it will be presented the Board again, and placed in the file room for an additional thirty (30) days. The effective date will be thirty (30) days from today's presentation, December 19, 2002.

6. Chairperson Carter then opened the general forum. GENERAL FORUM  
 There were no requests from the public and then Mr. Langbehn asked for guidance. Mr. Langbehn said that he had received several hundred telephone calls complaining about an odor problem coming from the Marshall Landfill. He wondered what could be done, especially considering lack of cooperation on the part of the town engineer to take any action. Mr. Palin said that he would check on regulations regarding control of methane and installation of gas collection. Chairperson Carter asked that the Board be informed about the results of research on the subject. Mr. Cundiff also commented that, having visited that site in past years, he would also like to know the results.
7. Chairperson Carter adjourned the meeting at 2:15 p.m. ADJOURNMENT

The next meeting will be January 21, 2003, at 1:30 p.m., at the Indiana Government Center South, Conference Center Room A, 402 West Washington Street, Indianapolis, Indiana 46204.

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CHAIRPERSON

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TECHNICAL SECRETARY